

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

2017 MAR -6 PM 12:04

**MUR 7104**

DATE COMPLAINT FILED: July 11, 2016

DATE OF NOTIFICATION: July 13, 2016

DATE OF LAST RESPONSE: None

DATE ACTIVATED: December 6, 2016

ELECTION CYCLE: 2016

EXPIRATION OF SOL: Earliest: 03/06/2021

Latest: 11/30/2021

**SOURCE:** Complaint Generated

**COMPLAINANT:** Kevin Tober

**RESPONDENTS:** Frederick John LaVergne for Congress and  
Leonard Marshall in his official capacity as  
treasurer

Frederick John LaVergne

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(a)

52 U.S.C. § 30104(b)(4)

52 U.S.C. § 30120

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3(b)

11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

Complainant alleges that Frederick John LaVergne ("LaVergne") and Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer ("Committee") failed to report disbursements for rental payments for two campaign offices. The Complaint further alleges that a website page soliciting contributions for the Committee does not contain the proper disclaimer, and the disclaimer on the homepage of the Committee's website is not

1 contained within a printed box. Although LaVergne and the Committee were notified of the  
2 Complaint, they did not submit a response.

3 We recommend that the Commission find reason to believe that the Committee failed to  
4 report receipts and disbursements in violation of 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R.  
5 § 104.3(a), (b). LaVergne was the 2016 Democratic Party nominee for New Jersey's 3<sup>rd</sup>  
6 Congressional District, but the Committee reported total receipts of only \$600 for the entire 2016  
7 election cycle, and no disbursements of any kind. Further, we recommend that the Commission  
8 dismiss the allegation regarding LaVergne's contribution page, and find no reason to believe  
9 regarding the "printed box" allegation. Because the Complaint sets forth no information which  
10 would indicate that LaVergne was personally responsible for the Committee's alleged violations,  
11 we also recommend that the Commission find no reason to believe that Frederick John LaVergne  
12 violated the Act.

## 13 II. FACTUAL AND LEGAL ANALYSIS

### 14 A. Facts

15 LaVergne was a candidate for the 3<sup>rd</sup> Congressional District of New Jersey.<sup>1</sup> The  
16 Committee was his principal campaign committee.<sup>2</sup> The Complaint alleges the campaign leased  
17 offices in Lacey Township and Willingboro, New Jersey, but failed to report any disbursements  
18 for rental payments.<sup>3</sup>

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<sup>1</sup> Statement of Candidacy, Frederick John LaVergne (Mar. 8, 2016). LaVergne won the Democratic primary, but he lost the general election, earning 38.9% of the vote.

<sup>2</sup> Statement of Organization, Frederick John LaVergne for Congress (Mar. 8, 2016).

<sup>3</sup> Compl. at 1 (July 11, 2016).

1 The Complaint includes copies of three Facebook posts referencing LaVergne's  
2 campaign offices.<sup>4</sup> The first is a photograph purportedly posted to LaVergne's Facebook page  
3 on March 18, 2016, which lists a campaign office address at 1044 Lacey Road – Suite 8, Lacey  
4 Township, New Jersey 08731.<sup>5</sup> The second post is from LaVergne, dated April 15, 2016,  
5 referring to the "official" opening of the Committee's "Burlington County Campaign office" in  
6 Willingboro, New Jersey, two weeks later, but also mentioning that the Committee used the  
7 office space the night before for a Presidential Debate Watch Party.<sup>6</sup> The third is an April 13<sup>th</sup>  
8 post stating that LaVergne and another candidate would host a Presidential Debate Watch Party  
9 the next night at LaVergne's campaign office located in Willingboro.<sup>7</sup> This information supports  
10 the allegations that the Committee was using two offices in March and April 2016.<sup>8</sup> Neither the  
11 Committee nor LaVergne responded.

12 The Commission's records indicate that the Committee filed only one disclosure report,  
13 the April 2016 Quarterly Report, covering the period of March 1<sup>st</sup> through March 31, 2016.<sup>9</sup>  
14 This report disclosed receipts of \$600 and no disbursements of any type.<sup>10</sup> LaVergne was a  
15 candidate in the 2016 primary and general elections, and there is no public information that  
16 suggests the Committee did not use these offices during the months leading up to the general  
17 election.

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<sup>4</sup> *Id.*, Attachs.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See April 2016 Quarterly Report, Frederick John LaVergne for Congress (Apr. 14, 2016).

<sup>10</sup> *Id.*

**B. Analysis**

**1. Reporting Violations**

The Federal Election Campaign Act of 1971, as amended ("Act"), and Commission regulations require the treasurer of a political committee to file reports of receipts and disbursements.<sup>11</sup> The Complaint sets forth facts indicating that the Committee leased two offices, but the Committee's sole disclosure report does not list disbursements for office space, or anything else. Thus, it appears that the Committee failed to report expenditures for renting office space. In addition, the Committee has not filed any reports since the 2016 April Quarterly Report, even though LaVergne was the Democratic candidate in the general election and earned nearly 40% of the vote. It is highly unlikely that LaVergne and the Committee raised no funds and made no expenditures after March 31, 2016. Therefore, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b) and authorize an investigation.<sup>12</sup>

Although candidates may have liability for reporting violations by their Committees that result from their personal conduct, none of the facts before the Commission would support finding LaVergne had personal liability for the reporting violations.<sup>13</sup> Accordingly, we recommend that the Commission find no reason to believe that Frederick John LaVergne violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(b).

<sup>11</sup> 52 U.S.C. § 30104(a)(1), (b); 11 C.F.R. §§ 104.1(a), 104.3(b).

<sup>12</sup> There is also the possibility that the campaign office space was provided to the Committee at no cost, which would still result in an unreported in-kind contribution from the lessor in violation of 52 U.S.C. § 30104(a), (b)(4).

<sup>13</sup> See MUR 6556 (Broun) (Commission concluded that the candidate had no personal liability for reporting violations). There are various provisions of the Act that specifically provide for candidate liability. See, e.g., 52 U.S.C. §§ 30116(f), 30118(a) and 30119. There are also other provisions of the Act that impose liability for "any person." See, e.g., 52 U.S.C. §§ 30120 and 30122. However, the applicable provisions of sections 30104 and 30120 speak to only the liability of a political committee and its treasurer.

2. Disclaimer Violations

The Act and Commission regulations require disclaimers on the following types of communications: (1) public communications made by political committees, (2) emails of more than 500 substantially similar communications sent by a political committee, (3) all websites of political committees made available to the general public, (4) public communications containing express advocacy, (5) public communications soliciting contributions, and (6) all electioneering communications by any person.<sup>14</sup> A "public communication" is defined as a "communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising."<sup>15</sup> However, the term "general public political advertising" does not include communications over the Internet, except for communications placed for a fee on another person's website.<sup>16</sup> The regulations further require that disclaimers for printed communications must be conspicuous and clearly state that they are paid for or authorized by a candidate or candidate's committee, be of sufficient type size to be readable, and be in a printed box set apart from the rest of the communication.<sup>17</sup>

The Complaint alleges that the Committee violated the Act's disclaimer requirements in two ways. First, the Complaint alleges that the Committee's "public fundraising" website does not contain a complete disclaimer.<sup>18</sup> The Complaint provides a copy of what appears to be a

<sup>14</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1) – (4).

<sup>15</sup> 11 C.F.R. § 100.26.

<sup>16</sup> *Id.*

<sup>17</sup> 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).

<sup>18</sup> Compl. at 1.

1 Paypal donation page for the Committee, which includes the notation "Frederick John LaVergne  
2 for Congress" without further explanation.<sup>19</sup> Second, the Complaint alleges that the disclaimer  
3 on the Committee's website, [www.fjl2016.com](http://www.fjl2016.com), is not contained within a printed box.<sup>20</sup>

4 The disclaimer on the bottom of home page of the Committee's website, "Paid for by  
5 Frederick John LaVergne for Congress," as well as the notation at the top of the Paypal page,  
6 "Frederick John LaVergne," provide sufficient information to identify that the Committee was  
7 the party responsible for the solicitation and would be the recipient of any contributions. Even if  
8 the disclaimer on the Paypal page is incomplete, the Commission has not pursued disclaimer  
9 violations where the disclaimer was incomplete but contained sufficient information to identify  
10 the party responsible for the communication.<sup>21</sup> Under these circumstances, we recommend that  
11 the Commission exercise its prosecutorial discretion and dismiss the allegation that the  
12 Committee violated 52 U.S.C. § 30120(a), (b) and 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).<sup>22</sup>

13 As to the allegation that the disclaimer on the Committee's website was not contained  
14 within a printed box, the Commission has concluded that internet pages do not constitute  
15 "printed communications."<sup>23</sup> Therefore, the "printed box" requirement does not apply to

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<sup>19</sup> *Id.*, Attach. Although the Complaint provides a link to the Paypal page, the link is not accessible. The Complaint attachment is not identical to the Committee's current donation page, but could represent an earlier version that was later modified to allow contributions to be made by credit card as well as through Paypal.

<sup>20</sup> Compl. at 1.

<sup>21</sup> See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

<sup>22</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>23</sup> 11 C.F.R. § 110.11(c)(2)(ii); see MUR 6904 (Cat Ping for Congress); see also Statement of Reasons, Comm'rs. Weintraub, Walther, Lenhard, Mason, Toner and von Spakovsky at 4, MUR 5526 (Graf for Congress); MUR 6591 (Friends of Tom Stilson).

campaign websites.<sup>24</sup> Accordingly, we recommend that the Commission find no reason to believe that the Committee or LaVergne violated 52 U.S.C. § 30120(c)(2)(ii).

### III. PROPOSED INVESTIGATION

Our investigation would seek to learn the amounts the Committee paid to rent its two offices. Given that the Committee filed only one report that disclosed nominal contributions, we would also seek a complete accounting of its receipts and disbursements for the 2016 election cycle. We will attempt to obtain this information voluntarily, but recommend that the Commission authorize the use of compulsory process.

### IV. RECOMMENDATIONS


1. Find reason to believe that Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b).
2. Find no reason to believe that Frederick John LaVergne violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b).
3. Dismiss the allegation that Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) and (c)(2) and 11 C.F.R. § 110.11(b)(1) and (c)(2) in connection with the contribution portion of its website.
4. Find no reason to believe that Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer violated 52 U.S.C. § 30120(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii) with regard to the disclaimer on the homepage of the Committee's website.
5. Find no reason to believe that Frederick John LaVergne violated 52 U.S.C. § 30120(c)(2) and 11 C.F.R. § 110.11(c)(2)(iv).
6. Authorize the use of compulsory process.
7. Approve the attached Factual and Legal Analysis.
8. Approve the appropriate letters.

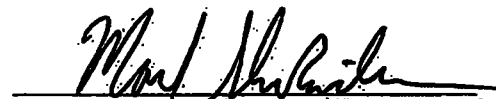
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<sup>24</sup> *Id.*

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Mark D. Shonkwiler  
Assistant General Counsel

  
Kimberly D. Hart  
Staff Attorney

3.6.17  
Date

Attachment  
Factual and Legal Analysis



**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR:** 7104

**RESPONDENTS:** Frederick John LaVergne and Leonard Marshall in his  
official capacity as treasurer

Frederick John LaVergne

**I. INTRODUCTION**

Complainant alleges that Frederick John LaVergne ("LaVergne") and Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer ("Committee") failed to report disbursements for rental payments for two campaign offices. The Complaint further alleges that a website page soliciting contributions for the Committee does not contain the proper disclaimer, and the disclaimer on the homepage of the Committee's website is not contained within a printed box. Although LaVergne and the Committee were notified of the Complaint, they did not submit a response.

The Commission finds reason to believe that the Committee failed to report receipts and disbursements in violation of 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b). LaVergne was the 2016 Democratic Party nominee for New Jersey's 3<sup>rd</sup> Congressional District, but the Committee reported total receipts of only \$600 for the entire 2016 election cycle, and no disbursements of any kind. Further, the Commission dismisses the allegation regarding LaVergne's contribution page, and finds no reason to believe regarding the "printed box" allegation. Because the Complaint sets forth no information which would indicate that LaVergne was personally responsible for the Committee's alleged violations, the Commission finds no reason to believe that Frederick John LaVergne violated the Act.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

LaVergne was a candidate for the 3<sup>rd</sup> Congressional District of New Jersey.<sup>1</sup> The Committee was his principal campaign committee.<sup>2</sup> The Complaint alleges the campaign leased offices in Lacey Township and Willingboro, New Jersey, but failed to report any disbursements for rental payments.<sup>3</sup>

The Complaint includes copies of three Facebook posts referencing LaVergne's campaign offices.<sup>4</sup> The first is a photograph purportedly posted to LaVergne's Facebook page on March 18, 2016, which lists a campaign office address at 1044 Lacey Road – Suite 8, Lacey Township, New Jersey 08731.<sup>5</sup> The second post is from LaVergne, dated April 15, 2016, referring to the "official" opening of the Committee's "Burlington County Campaign office" in Willingboro, New Jersey, two weeks later, but also mentioning that the Committee used the office space the night before for a Presidential Debate Watch Party.<sup>6</sup> The third is an April 13<sup>th</sup> post stating that LaVergne and another candidate would host a Presidential Debate Watch Party the next night at LaVergne's campaign office located in Willingboro.<sup>7</sup> This information supports

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<sup>3</sup> Compl. at 1 (July 11, 2016).

<sup>4</sup> *Id.*, Attachs.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1 the allegations that the Committee was using two offices in March and April 2016.<sup>8</sup> Neither the  
2 Committee nor LaVergne responded.

3 The Commission's records indicate that the Committee filed only one disclosure report,  
4 the April 2016 Quarterly Report, covering the period of March 1<sup>st</sup> through March 31, 2016.<sup>9</sup>  
5 This report disclosed receipts of \$600 and no disbursements of any type.<sup>10</sup> LaVergne was a  
6 candidate in the 2016 primary and general elections, and there is no public information that  
7 suggests the Committee did not use these offices during the months leading up to the general  
8 election.

9 **B. Analysis**

10 **1. Reporting Violations**

11 The Federal Election Campaign Act of 1971, as amended ("Act"), and Commission  
12 regulations require the treasurer of a political committee to file reports of receipts and  
13 disbursements.<sup>11</sup> The Complaint sets forth facts indicating that the Committee leased two  
14 offices, but the Committee's sole disclosure report does not list disbursements for office space,  
15 or anything else. Thus, it appears that the Committee failed to report expenditures for renting  
16 office space. In addition, the Committee has not filed any reports since the 2016 April Quarterly  
17 Report, even though LaVergne was the Democratic candidate in the general election and earned  
18 nearly 40% of the vote. It is highly unlikely that LaVergne and the Committee raised no funds

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8 *Id.*

9 *See* April 2016 Quarterly Report, Frederick John LaVergne for Congress (Apr. 14, 2016).

10 *Id.*

11 52 U.S.C. § 30104(a)(1), (b); 11 C.F.R. §§ 104.1(a), 104.3(b).

1 and made no expenditures after March 31, 2016. Therefore, the Commission finds reason to  
2 believe that the Committee violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b).<sup>12</sup>

3 Although candidates may have liability for reporting violations by their Committees that  
4 result from their personal conduct, none of the facts before the Commission would support  
5 finding LaVergne had personal liability for the reporting violations.<sup>13</sup> Accordingly, the  
6 Commission finds no reason to believe that Frederick John LaVergne violated 52 U.S.C.  
7 § 30104(a), (b)(4) and 11 C.F.R. § 104.3(b).

8 **2. Disclaimer Violations**

9 The Act and Commission regulations require disclaimers on the following types of  
10 communications: (1) public communications made by political committees, (2) emails of more  
11 than 500 substantially similar communications sent by a political committee, (3) all websites of  
12 political committees made available to the general public, (4) public communications containing  
13 express advocacy, (5) public communications soliciting contributions, and (6) all electioneering  
14 communications by any person.<sup>14</sup> A "public communication" is defined as a "communication by  
15 means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor  
16 advertising facility, mass mailing, or telephone bank to the general public, or any other form of  
17 general public advertising."<sup>15</sup> However, the term "general public political advertising" does not

<sup>12</sup> There is also the possibility that the campaign office space was provided to the Committee at no cost, which would still result in an unreported in-kind contribution from the lessor in violation of 52 U.S.C. § 30104(a), (b)(4).

<sup>13</sup> See MUR 6556 (Broun) (Commission concluded that the candidate had no personal liability for reporting violations). There are various provisions of the Act that specifically provide for candidate liability. See, e.g., 52 U.S.C. §§ 30116(f), 30118(a) and 30119. There are also other provisions of the Act that impose liability for "any person." See, e.g., 52 U.S.C. §§ 30120 and 30122. However, the applicable provisions of sections 30104 and 30120 speak to only the liability of a political committee and its treasurer.

<sup>14</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1) – (4).

<sup>15</sup> 11 C.F.R. § 100.26.

1 include communications over the Internet, except for communications placed for a fee on another  
2 person's website.<sup>16</sup> The regulations further require that disclaimers for printed communications  
3 must be conspicuous and clearly state that they are paid for or authorized by a candidate or  
4 candidate's committee, be of sufficient type size to be readable, and be in a printed box set apart  
5 from the rest of the communication.<sup>17</sup>

6 The Complaint alleges that the Committee violated the Act's disclaimer requirements in  
7 two ways. First, the Complaint alleges that the Committee's "public fundraising" website does  
8 not contain a complete disclaimer.<sup>18</sup> The Complaint provides a copy of what appears to be a  
9 Paypal donation page for the Committee, which includes the notation "Frederick John LaVergne  
10 for Congress" without further explanation.<sup>19</sup> Second, the Complaint alleges that the disclaimer  
11 on the Committee's website, www.fjl2016.com, is not contained within a printed box.<sup>20</sup>

12 The disclaimer on the bottom of home page of the Committee's website, "Paid for by  
13 Frederick John LaVergne for Congress," as well as the notation at the top of the Paypal page,  
14 "Frederick John LaVergne," provide sufficient information to identify that the Committee was  
15 the party responsible for the solicitation and would be the recipient of any contributions. Even if  
16 the disclaimer on the Paypal page is incomplete, the Commission has not pursued disclaimer  
17 violations where the disclaimer was incomplete but contained sufficient information to identify

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<sup>16</sup> *Id.*

<sup>17</sup> 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).

<sup>18</sup> Compl. at 1.

<sup>19</sup> *Id.*, Attach. Although the Complaint provides a link to the Paypal page, the link is not accessible. The Complaint attachment is not identical to the Committee's current donation page, but could represent an earlier version that was later modified to allow contributions to be made by credit card as well as through Paypal.

<sup>20</sup> Compl. at 1.

1 the party responsible for the communication.<sup>21</sup> Under these circumstances, the Commission  
2 exercises its prosecutorial discretion and dismisses the allegation that the Committee violated  
3 52 U.S.C. § 30120(a), (b) and 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).<sup>22</sup>

4 As to the allegation that the disclaimer on the Committee's website was not contained  
5 within a printed box, the Commission has concluded that internet pages do not constitute  
6 "printed communications."<sup>23</sup> Therefore, the "printed box" requirement does not apply to  
7 campaign websites.<sup>24</sup> Accordingly, the Commission finds no reason to believe that the  
8 Committee or LaVergne violated 52 U.S.C. § 30120(c)(2)(ii).

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<sup>21</sup> See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

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<sup>23</sup> 11 C.F.R. § 110.11(c)(2)(ii); see MUR 6904 (Cat Ping for Congress); see also Statement of Reasons, Comm'rs. Weintraub, Walther, Lenhard, Mason, Toner and von Spakovsky at 4, MUR 5526 (Graf for Congress); MUR 6591 (Friends of Tom Stilson).

<sup>24</sup> *Id.*